

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 568 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE CO LTD

Versus

DAUD OSMAN SIDI, F/O SALIM DAUD

Appearance:

MR SHASHIKANT S GADE for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 21/06/2000

ORAL JUDGEMENT

1. With the consent of learned Counsel for the Appellant Shri Shashikant S. Gade and Shri S.M.Shah for the respondent No.1 this Appeal can be finally disposed of at the admission stage.

2. The Appeal is directed against the order of the

Motor Accident Claims Tribunal, Kutch at Bhuj rendered under Section 163-A of the Motor Vehicles Act.

3. Learned Counsel for the parties have been heard on this Appeal.

4. The first contention of the learned Counsel for the appellant is that the involvement of the Jeep owned by the opponent No.3 and insured by the appellant is not prima facie established hence the impugned Award cannot be sustained. He has argued that neither in the FIR nor in the Panchnama the jeep number has been given and as such involvement of the jeep in accident seems to be highly doubtful and if it is so the instant Award is not sustainable. Shri Shah, learned Counsel for the respondent No.1, on the other hand, has argued that no doubt in the panchnama and FIR jeep number was not given, but there is mention in the panchnama about the involvement of the jeep. The Police investigated the matter and ultimately submitted the charge-sheet. In the course of investigation done by the police it has come that jeep No.GJ-12-B-8955 was involved in the accident. Shri Shah has pointed out that the zerox copy of charge sheet is not very legible, still he has pointed out that number is 8955. Shri Gade has contended that the mention of this jeep number in the charge sheet is an after-thought. It is difficult to accept this contention. Whether the jeep number is correctly written or not is a matter for adjudication before the criminal court and also before the Tribunal. There was prima facie evidence that the jeep was involved in the accident. The Tribunal, therefore, did not commit any illegality in observing that prima facie there was evidence of involvement of the jeep and also involvement of ST Bus in the accident.

5. The next contention of the learned Counsel for the appellant has been that the Tribunal has wrongly calculated the income of the victim. He has argued that no reliable evidence regarding the income of the deceased was produced and that the person who has given pay certificate has not produced any pay slip. The certificate issued in favour of the deceased indicates that he was working in the garage for the last three years and was earning Rs.3000/- p.m. The Tribunal, however, did not accept the authenticity of this certificate and also did not accept that the deceased was earning Rs.3000/- p.m. The deceased was aged about 17 years and was working as mechanic in the Garage. Looking to the age of deceased the Tribunal found that the monthly income of the deceased as mechanic could

reasonably be Rs.1500/-. This assessment cannot be said to be arbitrary. Even if we proceed on assumption that he was non earning member still under the Second Schedule notional income in such cases would not be less than Rs.1500/- per month. Consequently the income calculated by the Tribunal does not seem to be incorrect.

7. Learned Counsel for the appellant has also urged that in view of involvement of the jeep and ST Bus the liability on account of contributory negligence could not be more than 50 % and as such also the interim compensation calculated by the Tribunal is erroneous. Shri Shah has pointed out that in the Memo of Appeal the appellant has challenged the liability only to the extent of Rs.1,16,250/-. This is on the presumption that since two vehicles were involved it was a case of contributory negligence to the extent of 50 %. However, other grounds have been raised in the Memo of Appeal but they are not material at this stage hence we are unable to accept the contention of Mr.Shah that the Appeal is directed only to a limited extent for getting compensation reduced.

8. So far as the question of contributory negligence is concerned needless to say that under Section 163-A of the Motor Vehicles Act the claimants are not required to allege or prove negligence. If they are not so required to allege and prove negligence then it is difficult to accept the contention that in defence the plea of contributory negligence can be permitted to be taken and adjudicated upon at the stage of deciding the petition under Section 163-A of the Act. This point can be decided in the main petition under Section 166 of the Motor Vehicles Act. Shri Shah points out that such petition has been filed and is pending before the Tribunal. As such the plea of contributory negligence can be raised by the appellant before the Tribunal by filing appropriate written statement and can also challenge the liability on the grounds which are legally available to the appellant.

9. Shri Shah has rightly pointed out that even after filing of the charge-sheet no counter Affidavit was filed by the appellant denying the involvement of jeep No.GJ-12-B-8955. The Tribunal has taken aid and guidance from the Second Schedule of the Act while calculating the compensation under different heads. The calculation made by the Tribunal does not seem to be erroneous or against the guidelines given in the Second Schedule. Consequently we do not find any ground for interference in this Appeal. The Tribunal has already taken sufficient safe-guard in directing that 40 % amount shall

be paid by A/c. Payee cheque to the claimant and 60 % shall be deposited in Fixed Deposit in a Scheduled Bank for a period of six years. Other conditions were also imposed by the Tribunal for pre-mature withdrawal, etc. from the Fixed Deposit.

10. Mr. Shah agrees that the respondent No.1 shall file an Undertaking before the Tribunal that the petition under Section 166 of the Motor Vehicles Act shall not be got dismissed in default rather it shall be contested on merit. As such on these facts and circumstances the Appeal is liable to be dismissed with no order as to costs.

11. The Appellant is directed to deposit the entire amount under Award including the cost and interest within a period of six weeks from today. The amount so deposited shall be disbursed in accordance with the directions given by the Tribunal. The respondent No.1 shall file written undertaking within a period of two weeks that he shall proceed with the petition under Section 166 of the Motor Vehicles Act and shall not get it dismissed in default. The Appeal is dismissed with no order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : June 21, 2000 sd/-

(H. K. Rathod, J.)

sas